



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.08.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN

THE HON'BLE MR.JUSTICE K.MOHAN RAM
AND

THE HON'BLE MR.JUSTICE V.DHANAPALAN

T.C.No.55 OF 1996 & T.C.NO.107 OF 1996

Commissioner of IncomeTax
Tamil Nadu - II, Madras
..Applicant in

T.C.No.55/1996

Commissioner of Income Tax
Tamil Nadu - III, Madras
..Applicant in

T.C.No.107/1996

Vs.

K.J.Ramaswamy, Madras
..Respondent in

..T.C.No.55/1996

K.J.Seetharaman, Madras
..Respondent in

T.C.No.107/1996

Prayer : Tax Appeals filed under section 256(2) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras Bench 'B' in R.A.Nos.157 (Mds) 91 & 1442 (Mds)/92 arising out of ITA Nos. 1493(Mds)/87 & 4099(Mds)/1988 for the Assessment years 1983-84 and 1985-86 respectively against the orders of (i) the Appellate Assistant Commissioner of Income-Tax, Madras - 600 034 dated 10.2.87 and made in I.T.A. NO. 5/86-87; and (ii) The Commissioner of Income Tax (Appeals) Madras - 600 034 dated 29.9.88 and made in ITA No. 104/87-88 respectively against the orders of (i) the Income Tax Officer, City Circle I(6) Madras - 34 dated 27.1.86 and made in G.I.No. 7000-R/83-84; and ii) the Inspecting Assistant Commissioner of Income-Tax (Assessment) Range IV, Madras dated



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26.10.87 and made in GI No. 733-S/47-066-PY-2921 respectively.

For Applicant : Mrs.Pushya Sitaraman

For Respondent : Mr.R.Vijayaraghavan

COMMON ORDER

(Order of the court was delivered by
Justice R.Balasubramanian)

These two tax cases are before us on a reference order dated 25.02.2002 made by a Division Bench consisting of two learned Judges of this court. The question referred to the Division Bench for answer is as hereunder:

"Whether on the facts and in the circumstances of the case, the appellate Tribunal was right in law in holding that the share income of the minors who are beneficiaries of a trust which was a partner in a registered firm cannot be clubbed in the hands of the assessee under section 64(1) (iii) of the Income Tax Act?"

Before the Division Bench, learned counsel for the Revenue relied upon a judgment of this court in the case reported in 256 ITR 191 (Commissioner of Income Tax Vs. K.J.Ramaswamy) to contend that in computing the total income of the individual/assessee in this case, such income of the minor should be included. The above referred to judgment is in relation to an assessee by name K.J.Ramaswamy, who is the assessee in T.C.No.55/1996 and similar are the facts in that case. However, learned counsel for the assessee contended that inasmuch as there is no dispute that under the trust deed the beneficiaries/minors cannot lay their hands on their share of income till they attain majority, it is not possible to include their share of income in computing the total income of the individual/assessee in this case. Learned counsel appears to have contended before the Division Bench that though the Supreme Court judgment reported in 211 ITR Pg.1 (Commissioner of Income Tax Vs. M.R.Doshi) is in construing section 64 (1)(v) of the Income Tax Act, yet, the principle laid down therein would enable this court to exclude the minor's share in the income from being included in computing the total income of the individual. Having regard to the submissions made by the learned counsel on either side, the Division Bench reasoned as hereunder, requesting the Hon'ble Chief Justice to constitute a larger Bench. The reasons given by the Division Bench in making the reference is extracted as hereunder:

"10. It is quite apparent that both the



judgments of Karnataka High Court and Andhra Pradesh High Court are also specifically on Explanation 2A and they have followed the earlier judgment of the Supreme Court confirming the Gujarat High Court decision. Be that as it may. In the wake of the direct decision of this court, we would be certainly bound by that decision. However, the learned counsel for the assessee points out that in that judgment, the Supreme Court judgment has not been taken into consideration and, therefore, it would be for us to follow the Supreme Court judgment instead of the Division Bench judgment of this court. There can be no doubt that the Supreme Court has in terms incorporated the terminology of "for the benefit of the minor child" and, therefore, that judgment would be binding on us. The Supreme Court judgment is direct and we do not think that any difference could be made by the introduction of Explanation 2A. However, judicial propriety would require that we should not take a contrary view to the one which has been taken by the earlier Division Bench of this court, which we have quoted earlier."

2. Let us now look at the facts. There are two trusts called "Balan Trust" and "Janakiraman Trust", the founder being "Balan Janakiraman". The beneficiaries of Balan Trust are the two minor children of Ramaswamy and the beneficiaries of the latter trust are the two minor children of Seetharaman. Ramaswamy and Seetharaman are brothers and they are the assessees in this case. The founder trustee of the two trusts had become a partner of M/s.International Clearing and Shipping Agencies in a representative capacity. The assessment year in T.C.No.55/1996 is 1983-84 and the assessment year in T.C.No.107/1996 is 1985-86. The assessee in each case is the father of the respective beneficiaries under the two trusts. A question arose as to whether the income derived by the trustee in the representative capacity from the partnership firm would be added on to the income of the respective parent of the beneficiaries or not under section 64(1)(iii) of the Income Tax Act read with Explanation 2A of the very same section?

3. It may be noted here that similar was the situation before this court in respect of one of the assessees in the above referred to case viz., 256 ITR Pg.191 referred to supra, where a Division Bench of this Court, as already noted, held that the income so derived from the partnership firm by the representative trustee should be clubbed to the income of the individual namely, father of the beneficiary. The same issue cropped up for the subsequent assessment years namely, 1983-84 in T.C.No.55/1996 and 1985-86 in T.C.No.107/1996.

4. Mrs.Pushya Sitaraman, learned Senior Standing



Counsel appearing for the Revenue would contend that the share of income of the beneficiary from the partnership firm at the hands of the representative trustee, who is a partner of the said firm, has to be necessarily included in computing the total income of the individual in this case namely, father of the beneficiary/assessee. Learned counsel heavily relied upon the judgment of this court in the case reported in 256 ITR 191 to sustain her argument. She would then contend that the very purpose and object of introducing Explanation 2A to section 64(1) of the Income Tax Act, hereinafter referred to as the Act, is only to see that evasion of payment of tax is avoided. Contending contra, learned counsel appearing for the assessee would contend, by drawing our attention to the phrase used in Explanation 2A to section 64(1) of the Act namely, "for the benefit of" the minor child, that unless the share income of the minor/beneficiary from the partnership firm is shown to be immediately available for the use of the minor, it cannot be held that such share of income should be added on in computing the total income of the assessee in this case. According to him, since in this case it is seen that the entire share of income of the minor/beneficiary from the partnership firm stands transferred to the trust account to be kept intact till the beneficiary/minor attains majority, it must be necessarily held that from that income the minor do not have any benefit for the present. For this purpose, learned counsel heavily relied upon the judgment of the Supreme Court in the case reported in 211 ITR 1 (Commissioner of Income Tax Vs. M.R.Doshi).

5. Having regard to the submissions made by the learned counsel on either side, we went through the entire materials found reflected in the records. We also went through the relevant provisions of law. Under section 64 of the Income Tax Act, in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm. We extract the relevant portion of section 64 hereunder:

"64. Income of individual to include income of spouse, minor child, etc. - (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly".

"(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm."

Explanation 2A to section 64 is extracted hereunder:

"For the purposes of clause (iii), where the minor child of an individual is a beneficiary under a trust, the income arising to the trustee from the membership of the



trustee in a firm shall, to the extent such income is for the benefit of the minor child, be deemed to be income arising indirectly to the minor child from the admission of the minor to the benefits of partnership in a firm."

We extract hereunder section 64(1)(vii) of the Income Tax Act - (Section 64(1)(vii) was previously in the Statute book as section 64(1)(v) :

"(vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."

6. In our considered opinion, in understanding sub clause (iii) of sub section (1) of section 64 of the Act, we have to necessarily look into Explanation 2A to that section. In other words, Explanation 2A would help the court to understand the scope of section 64(1)(iii) of the Act. To find out why Explanation 2A was introduced, we perused the Finance Act, 1979. The reasons for bringing Explanation 2A to section 64(1) of the Act by way of an amendment are given in paragraph 20.2 of the Finance Act, 1979. We extract paragraph 20.2 as hereunder:

"20.2. Share of minor from trust, where trustee is in partnership with any person, to be included in income of parent: Under the existing provisions of the Act, the income arising to a minor child from admission to the benefits of partnership is included in the income of that parent who has higher income, although neither of the parents is a partner in the firm to the benefits of which the minor is admitted. With a view to countering a device for circumventing this provision through interpolation of a trust, a new provision has been introduced by FA 79 to provide that where a minor child of an individual is a beneficiary under a trust and the trustee joins in any partnership business with any person, the income arising to the trust, to the extent it is for the benefit of the minor child, will be included in the total income of that parent who has the higher income: (Explanation 2A inserted in sec.64(1) from 1-4-80).

Therefore the Legislature was aware of the fact that by creating a trust, an individual may exclude the income, arising to a minor child from his admission to the benefits of partnership, from his income. Under these circumstances, we must give a true meaning to Explanation



2A to section 64(1) of the Act. Reading section 64(1)(v) of the Act, as it originally stood, (now 64(1)(vii)), it is clear that if an individual transfers the assets directly or indirectly otherwise than for adequate consideration to any person or association of persons, then, to the extent to which the income from such assets is for the immediate or deferred benefit of, that such income either arising directly or indirectly shall be added to the income of the individual in computing his total income. To put it in a nut-shell, if, from the assets transferred by an individual to the persons mentioned in the above sub section an income is generated and that income is for the immediate or deferred benefit of the person in whose favour the transfer is made, then such income shall be lawfully included in the income of the individual in computing his total income. To attract section 64(1)(v) of the Act, it must be seen that the income generated from such assets is available for the immediate or deferred benefit of the persons mentioned in that sub-section.

7. This sub-section came up for consideration before the Supreme Court in the judgment reported in 211 ITR 1 referred to supra. The facts in that case are as hereunder:

"The assessee, an individual, had executed two deeds of trust and a supplementary deed, the cumulative effect of which was that the income from the trusts was to be accumulated until the attainment of majority by his three sons. The cumulative income was then to be divided into three equal shares and the respective 1/3rd share of each son was to be paid to him. The question was whether the income from the trusts could be included in the total income of the assessee under the provisions of section 64(1)(v) of the Income Tax Act, as it then stood."

The Hon'ble Supreme Court then went on to hold as hereunder:

"In the judgment in the assessee's own case (Addl.C.I.T Vs. M.K.Doshi (1980) 122 ITR 499, the Gujarat High Court held, on a construction of section 64(1)(v), that the income from the transfer of assets can be included in the income of the transferor provided that, under the transfer, the benefit from such assets was immediately available or was deferred for the spouse or minor children of the settlor. In other words, the mischief of tax evasion by assesseees by transfer of their assets, such as by settlement or by trust, so as to make the income of such transferred assets available to their spouses or minor children without subjecting the same to tax in the hands of the settlors, was sought to be avoided by providing that such income would be includible in the hands of the settlors provided that the benefit from the income of such assets was



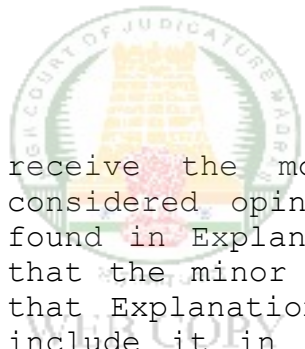
either immediately available to or was deferred for the benefit of their spouses or minor children. If the child for whom the benefit was provided was to receive it on attaining majority, the provision contained in clause (v) was not attracted on the plain reading of clause (v) itself, because, otherwise, the Legislature would not have expressed itself in the manner in which it did. Reliance was placed upon *Yogindraprasad N.Mafatlal Vs. CIT (1977) 109 ITR 602 (Bom)* where the same view was taken."

The Supreme Court concluded on facts as hereunder:

"As the facts show, the trusts in the present case have this cumulative effect, that the income therefrom is to be accumulated until the attainment of majority by the assessee's three sons; the cumulative income is then to be divided in three equal shares and one such share is to be paid to each son. The payment, therefore, is to be made after each of the sons attains majority. Section 64(1)(v) requires, in the computation of the total income of an assessee, the inclusion of such income as arises to the assessee from assets transferred, otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of, inter alia, his minor children. The specific provision of the law, therefore, is that the immediate or deferred benefit should be for the benefit of a minor child. Inasmuch as in this case the deferment of the benefit is beyond the period of minority of the assessee's three sons, since the assets are to be received by them when they attain majority, the provisions of section 64(1)(v) have no application."

From the judgment referred to above, it is clear that if the benefit has to reach a child only on the child attaining majority, namely, the benefit getting postponed to a definite future date, then, the income earned by such beneficiary shall not be included in the income of the individual in computing his total income. The words used in this sub-section is "immediate or deferred benefit".

8. In Explanation 2A, the phrase used is "for the benefit of the minor child". This means that the minor should have the benefit of the income. In other words, the income must be readily available for the use of the minor. If the income is only to be credited to the minor's account in the trust and to remain there as it is till the minor attains majority, then, it must be held that it is not for an immediate use for the minor, which means that the minor do not get any benefit at all for the present. He is not entitled to



receive the money till he attains majority. Therefore, in our considered opinion, the expression "for the benefit of the minor" found in Explanation 2A to section 64(1) of the Act would only mean that the minor should be the legal owner of the income mentioned in that Explanation, which alone would enable the Assessing Officer to include it in the income of the individual in computing his total income. The case of the assessee is that, the share of income of the minor from the partnership firm has to be transferred to the trust account and to be accumulated as it is till the beneficiary/minor attains majority. Therefore, we have no difficulty at all in holding that in such an event the income of the beneficiary from the partnership firm shall not be included in the income of the individual in computing his total income. The Supreme Court, in M.R.Doshi's case referred to supra, after considering the expressions found in section 64(1)(v) of the Income Tax Act namely, immediate or deferred benefit, went on to hold that if the child, for whom the benefit was provided, was to receive it on attaining majority, then, the provision contained in clause (v) as it stood then, was not attracted at all on the plain reading of clause (v) itself. Therefore, reading Explanation 2A to section 64(1) of the Act, we want to fall in line with the judgment of the Supreme Court to hold that so long as it is shown that the beneficiary/minor son of the individual has to receive his share of income only on attaining majority, clause (iii) to section 64(1) of the Act would not be attracted to the case on hand.

9. In T.C.No.55/1996, we find that there is a finding as hereunder in the order dated 03.01.1991 in I.T.A.No.1493/1987 on the file of the Income Tax Appellate Tribunal, Madras Bench - B.

"On appeal, the Commissioner of Income Tax (Appeals) had observed that the income accrued to the benefit of the minor children was allowed to accumulate and the accumulated amount was added to the fund of the trust till the minor attains majority."

Therefore there cannot be any difficulty at all, as far as the reference made in T.C.No.55/1996 is concerned, that the income in the hands of the individual namely, the assessee, representing the income of the minors which are shown to be added to the fund of the trust till the minors attain majority, cannot be included in the income of the individual - assessee/respondent therein. In T.C.No.107/1996, there is nothing on record to show as to how the income of the minor/beneficiary from the partnership firm has to be treated. Therefore it is a matter for verification. If, on verification, it is found that such income in the hands of the trustee stands transferred to the trust account to be accumulated till the minors/beneficiaries attain majority, then, it shall not be included in the income of the individual. If it is otherwise, it can be included. Accordingly, T.C.No.107/1996 stands disposed of as



hereunder:

" The Assessing Officer will reopen the assessment for the period 1985-86; verify from the records already available or to be produced by the assessee as to the manner of disposal of the minors/beneficiaries share of income from the partnership firm namely, whether it is available for their immediate benefit or it stands credited to the trust account to be accumulated till the beneficiaries attain majority and depending upon the outcome of such finding, to proceed in accordance law".

10. We conclude as hereunder:

"To attract clause (iii) of section 64(1) of the Income Tax Act read with Explanation 2A of the same Act, unless it is found that the minor, for whose benefit the income is available, is shown to have an absolute right of disposal in presenti over the same, it cannot be included in the income of the individual in computing his total income. In other words, if such income is to reach the hands of the minor/beneficiary only on attaining majority, then it cannot be included in the income of the individual in computing his total income. The question referred to this court stands answered accordingly against the Revenue and in favour of the assessee. In view of the judgment of the Supreme Court reported in 211 ITR 1 (Commissioner of Income Tax Vs. M.R.Doshi) and in the light of the reasons given by us in this judgment, we declare that the judgment of this court in 256 ITR 191 (Commissioner of Income Tax Vs. K.J.Ramaswamy) is no longer good Law.

vsl

Sd/
Asst.Registrar

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